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APPLICATION NO. 05/721,682	FILING DATE 04/16/99	FIRST NAMED INVENTOR WRIGHT	ATTORNEY DOCKET NO. C JJ1-43
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Q31/0426  
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EXAMINER JACKSON, S	
ART UNIT 3738	PAPER NUMBER 8

DATE MAILED: 04/26/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
**09/061,568**

Applicant(s)  
**Carol Wright et al.**

Examiner  
**Suzette Jackson**

Group Art Unit  
**3738**



☒ Responsive to communication(s) filed on Feb 8, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-11 is/are pending in the application.

Of the above, claim(s) 1-3 is/are withdrawn from consideration.

☒ Claim(s) 5, 6, and 9 is/are allowed.

☒ Claim(s) 4, 7, 8, and 11 is/are rejected.

☒ Claim(s) 10 is/are objected to.

☐ Claims are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: .

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 7

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **DETAILED ACTION**

1. Applicant's amendment and Information Disclosure Statement dated 08 February 1999 has been received in application serial number 09/061,568. Claims 1-3 have been canceled. The new title has been accepted.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 7 and 8 fail to further limit claim 6. In particular claim no. 7 recites "...wherein said channel is rectangular in shape" (covered in claim 6, line 11) and claim no. 8 recites "...containing struts with said channels." (covered in claim 6, line 6).

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***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

4. Claim 4 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Yan USPN 5,843,172 which discloses a prosthesis comprising: a stent (12) formed from a metal wire or strut (col.2, line 21) with pores loaded with therapeutic agents; the pores having a closed perimeter on all sides and an open top (see Figure 3); Yan also discloses that various drugs or agents may be used to prevent restenosis without limitation, since other therapeutic drugs may be developed which are equally applicable for the use of the present invention (col. 5., lines 1-38).

***Allowable Subject Matter***

5. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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6. Claims 5, 6, and 9 are allowed.

*Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lentz et al. 5,843,166 shows another closely related prosthesis.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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9. Any inquiry concerning this communication or earlier communication regarding this application should be directed to examiner Suzette Jackson at (703) 308-6516. If you are unable to reach me, please contact my supervisor, Mickey Yu, at (703) 308-2672. In a case requiring immediate assistance, please call (703) 308-0858 to reach the main operator for Sector 3700.



SJJ

19 April 1999



David H. Willse  
Primary Examiner